STATE OF NEW YORK

STATE TAX COMMISSION

- - - - - - - - - - - - - - - - - - -

In the Matter of Applications :

of :

THE WURLITZER COMPANY :

for revision of franchise taxes under Article 9-A of the tax law for the fiscal years ended March 31, 1963 and March 31, 1964. : :

- - - - - - - - - - - - - - - - - - -

The Wurlitzer Company having filed applications for revision of franchise taxes under Article 9-A of the tax law for the fiscal years ended March 31, 1963 and March 31, 1964 and a hearing having been held in connection therewith at the office of the State Tax Commission at the State Campus in Albany, New York, on February 17, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Ago Koerv, Vice President and Treasurer of the taxpayer, Earle A. Courter, Manager, Tax Department of the taxpayer, and Edward M. Griffith, Jr., Esq. and Thomas M. Barney, Esq., of Phillips, Lytle, Hitchcock, Blaine & Huber, Counsel for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Wurlitzer Company was incorporated under the laws of Ohio on March 25, 1890 and began doing business in New York in 1909.

(2) Wurlitzer Company filed franchise tax reports on an individual basis for fiscal years ended March 31, 1963 and March 31, 1964. Wurlitzer Acceptance Corporation, which was incorporated in Delaware on July 11, 1957, did not file franchise tax reports, since it took the position that it was not doing business in New York.

(3) On July 15, 1969, notices of assessment were issued based on recommendation of field auditors of the Tax Commission, computing taxes due from Wurlitzer Company and Wurlitzer Acceptance Corporation on a combined basis as follows:

| | Fiscal Year Ended March 31, 1963 | Fiscal Year Ended March 31, 1964 |
|---|---|---|
| Combined tax | $50,845.28 | $49,581.71 |
| Tax paid | 41,935.19 | 40,503.69 |
| Added tax | 8,910.09 | 9,078.02 |

(4) On October 7, 1969 timely applications for revision of such added taxes were filed.

(5) Wurlitzer Company operates five divisions: The Holly Springs Division in Holly Springs, Mississippi manufactures keyboards and piano actions which are used by other divisions. The other divisions manufacture and sell finished products as follows:

| | | |
|---|---|---|
| Elkhart Division | - Indiana | band instruments |
| North Tonawanda Division | - New York | juke boxes |
| Corinth Division | - Mississippi | electronic organs |
| DeKalb Division | - Illinois | pianos, electronic pianos, stereo radio-phonograph combinations |

The DeKalb Division also operates retail stores within and without New York.

(6) Products of Wurlitzer Company are sold to independent dealers and distributors as well as through the retail stores operated by the DeKalb Division.

(7) The taxpayer testified that since a substantial portion of sales are made on long-term credit, Wurlitzer Company maintained very substantial slow turnover receivables and was constantly short of working capital. Wurlitzer Acceptance Corporation was formed on July 11, 1957, as a wholly-owned subsidiary,

to correct this situation. Its capitalization of $2.5 million was paid in by Wurlitzer Company in the form of receivables and its primary function was the purchase of retail installment receivables from its parent. A company which deals exclusively in receivables, especially secured receivables, is considered to be a better risk than a manufacturing company. Banks are generally willing to lend a company of this type $3 for each $1 of net worth while they are generally willing to lend a manufacturer only $.50 for each $1 of net worth. Wurlitzer Acceptance Corporation was able to establish lines of credit exceeding $14 million.

(8) The establishment of Wurlitzer Acceptance Corporation permits Wurlitzer Company to immediately convert its retail installment receivables to cash and permits the use of its working capital in the expansion of its manufacturing operation.

(9) Retail installment receivables are notes which are executed by a purchaser of a musical instrument or juke box. They are obtained by Wurlitzer Company as part payment for such merchandise sold at a company operated retail store, or merchandise sold by a division to a dealer or a distributor. A credit check is made by Wurlitzer Company prior to a sale.

(10) Retail installment receivables are purchased from Wurlitzer Company by Wurlitzer Acceptance Corporation without credit check of any kind. Although Wurlitzer Company is not obligated to repurchase delinquent accounts, in practice, it generally does. If Wurlitzer Company does not repurchase the delinquent account, by terms of the agreement with Wurlitzer Acceptance Corporation, it is obligated to exercise usual and normal effort to effect repossession, provide drayage and storage and to repurchase the repossessed merchandise for the balance of the account.

(11) Retail installment receivables which Wurlitzer Acceptance Corporation acquired from Wurlitzer Company and which were originally obtained as part payment on a sale made by a retail store are collected by the same retail store on behalf of Wurlitzer Acceptance Corporation. Wurlitzer Acceptance Corporation is charged 4% of collections for this service.

(12) Retail installment receivables which Wurlitzer Acceptance Corporation acquired from Wurlitzer Company and which were originally obtained as part payment of a sale made by Elkhart Division, North Tonawanda Division, Corinth Division or DeKalb Division are collected by the respective division on behalf of Wurlitzer Acceptance Corporation. Wurlitzer Acceptance Corporation is charged 3% of collections for this service.

(13) Wurlitzer Company submitted information to show that its charge to Wurlitzer Acceptance Corporation for the collection service represents the cost of such service plus a reasonable profit.

(14) Wurlitzer Acceptance Corporation owns no real or tangible property and has no paid employees. All of its receivables are acquired from Wurlitzer Company. All activities of Wurlitzer Acceptance Corporation are performed by employees or officers of Wurlitzer Company.

(15) Section 211.4 of Article 9-A of the tax law states:

> "In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however, that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision

five of this section, in order properly to reflect the tax liability under this article. * * *."

(16) Section 5.28 b and Section 5.28 c of Ruling of the State Tax Commission with respect to the franchise tax on business corporations imposed by Article 9-A of the tax law, issued on March 14, 1962 states:

"In any case where the test of stock ownership or control set forth above is met, a combined report may be permitted or required by the State Tax Commission, in its discretion. In determining whether, in a case where the test of stock ownership or control is met, the tax will be computed on the basis of a combined report, the State Tax Commission will consider various factors, including the following: (1) whether the corporations are engaged in the same or related lines of business; (2) whether any of the corporations are in substance merely departments of a unitary business conducted by the entire group; (3) whether the products of any of the corporations are sold to or used by any of the other corporations; (4) whether any of the corporations perform services for, or lend money to, or otherwise finance or assist in the operations of, any of the other corporations; (5) whether there are other substantial intercompany transactions among the constituent corporations."

"The State Tax Commission may not require, although it may permit, the inclusion in a combined report of foreign corporations not doing business in New York so as to be subject to tax under Article 9-A and which are therefore not 'taxpayers', unless the State Tax Commission determines that such inclusion is necessary in order properly to reflect the tax liability of the taxpayers included in the group, because of intercompany transactions or some agreement, understanding, arrangements or transaction referred to in subdivision 5 of section 211 of the Tax Law."

Upon the foregoing findings and all the evidence presented, it is hereby

DETERMINED:

(A) The tax law and regulations provide the Tax Commission with discretionary authority to require the inclusion of a non-taxpayer in a combined report with one or more taxpayers where such inclusion is necessary in order to reflect the proper tax liability, either because of:

(1) intercompany transactions, or

(2) an agreement, understanding or arrangement whereby the activities, business, income or capital of the taxpayers are improperly or inaccurately reflected.

(B) Black's Law Dictionary defines the word "or" as a disjunctive particle used to express an alternative or to give a choice of one among two or more things.

(C) The income of Wurlitzer Acceptance Corporation is wholly generated by intercompany transactions with Wurlitzer Company through the medium of purchasing receivables from Wurlitzer Company and then having Wurlitzer Company perform the collection service.

(D) Wurlitzer Acceptance Corporation is in substance merely the finance department of the unitary business conducted by Wurlitzer Company.

(E) The computation of the tax liability of Wurlitzer Company by including Wurlitzer Company and Wurlitzer Acceptance Corporation in a combined report properly reflects its liability for franchise tax purposes and the notices of assessment issued on July 15, 1969 are affirmed as correct.

Dated: Albany, New York
this 18th day of February 1972.

STATE TAX COMMISSION

Norman Gallman
President

Bruce Hoadley
Commissioner

Milton Koerner
Commissioner